

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED ENERGY TRADING, LLC,

Plaintiff,

v.

PACIFIC GAS & ELECTRIC CO., et al.,

Defendants.

Case No. [15-cv-02383-RS](#)

**ORDER DENYING MOTION TO
DISMISS**

I. INTRODUCTION

This is the third time up for plaintiff United Energy Trading, LLC (“UET”) in its quest to state an “attempt to monopolize” claim against defendant Pacific Gas & Electric Company (“PG&E”). *See* 15 U.S.C. § 2. UET swung and missed on its first two tries, but here it puts the ball in play. PG&E’s motion to dismiss the Sherman Act claim will be denied. Pursuant to Civil Local Rule 7-1(b), the motion set for August 11, 2016, is suitable for disposition without oral argument, and the hearing will be vacated.

II. BACKGROUND¹

PG&E is the traditional public utility in northern California. Until 1991, it held a state-sanctioned monopoly over the distribution of natural gas in that area. PG&E thus owns and operates the entire infrastructure that physically stores and transports natural gas to customers in northern California. PG&E is regulated by the California Public Utilities Commission (“CPUC”), which requires PG&E to set its natural gas rates through use of a pre-approved formula. The

¹ The factual background is based on the averments in the amended complaint, which must be taken as true for purposes of a motion to dismiss. The background was set forth in greater detail in the prior orders and is repeated here only as it pertains to UET’s new allegations.

1 formula does not vary, but PG&E exercises discretion over certain variables, including the
2 calculation of its purchase price, its expenses, and its overcharges.

3 UET is a Core Transportation Agent (“CTA”), meaning it buys gas on the open market and
4 sells it to customers using PG&E’s distribution system. If UET cancels a customer, they revert to
5 PG&E as the default natural gas provider. UET specifically competes with PG&E to provide
6 natural gas to “core customers.”² The geographical boundaries of that market span from Eureka in
7 the north to Bakersfield in the south, and from the Pacific Ocean in the west to the Sierra Nevada
8 mountains in the east. The gas UET and PG&E supply is fungible in composition and function.
9 UET is one of twenty-two CTAs that compete with PG&E in this market.

10 Proposed CTAs must fulfill exacting standards to operate in California, among them,
11 completing an application, submitting executives’ fingerprints, establishing creditworthiness, and
12 posting a bond. As one aspect of deregulation, PG&E must offer CTAs the opportunity to
13 consolidate their bills with those of PG&E. Under a program called “Optional Consolidated
14 PG&E Billing,” both the CTA’s charges and PG&E’s charges appear on a consolidated statement,
15 and the customer pays both sets of charges with a single check to PG&E. Under Consolidated
16 Billing, PG&E also acts as the CTA’s collections agent. In that capacity, PG&E sends notices to
17 the CTA’s customers informing them of unpaid balances, collects from the CTA’s customers the
18 balance of unpaid charges, and takes other actions to help recover from customers any unpaid
19 amounts owed to the CTA. After PG&E receives money from a customer, it is required to pay the
20 CTA the amounts paid to PG&E for the CTA’s charges. In 2012, UET elected to participate in the
21 Optional Consolidated PG&E Billing program. Approximately eighteen CTAs in total use PG&E
22 as their billing and collections agent.

23 UET submits CTAs cannot practically or reasonably establish their own billing and
24

25 ² Core customers are “all residential customers within the Relevant Geography regardless of load
26 size, commercial customers with annual loads below 250,000 therms, and those commercial
27 customers with annual loads above 250,000 therms who elect to receive the higher reliability
28 associated with core service.” Compl. ¶ 120.

1 collection services while continuing to offer natural gas to core customers at competitive prices.
2 Though the CPUC compelled PG&E to share its services to eliminate that barrier to entry, UET
3 insists the CPUC lacks the effective power to regulate the scope, terms, and manner in which
4 those services are provided to CTAs.

5 The instant dispute centers on predatory and exclusionary acts PG&E allegedly commits in
6 its capacity as the billing and collections agent for the CTAs. Specifically, in the “Payment
7 Withholding Scheme,” PG&E uses its role as the CTAs’ billing agent to withhold money owed to
8 the CTAs, misleading them into believing the customer is not paying. In the “Energy Credit
9 Scheme,” PG&E applies credits from its own services and programs to CTAs’ charges, effectively
10 misappropriating them to offset the money PG&E owes to its own customers. In the “Reversal
11 Scheme,” PG&E simply disconnects core customers from the CTAs’ natural gas service and
12 returns them to PG&E’s natural gas service. These fraudulent schemes lack any legitimate
13 business justification, in UET’s eyes, and allegedly are perpetrated against CTAs based not on
14 competitive zeal, but anticompetitive malice. Indeed, UET avers PG&E intentionally leverages its
15 monopoly over billing and collection services to expand its market share and destroy competition
16 for natural gas commodity service.

17 UET insists the schemes have several anti-competitive results. To begin, they significantly
18 increase CTAs’ operating expenses by forcing them to expend large sums on marketing in an
19 effort to maintain their dwindling customer bases.³ Given the schemes eliminate customers as
20 quickly as CTAs can add them, however, UET contends CTAs as a practical matter have no ability
21 to expand their output in response to PG&E’s conduct. Next, the schemes leave CTAs with large
22 carrying costs because they ensure payment will be late or never received. UET notes this cash
23 flow disruption prevents it from accurately projecting revenue or managing its credit facilities.

24 UET reports it has lost about half of its customers as a result of the schemes. Other CTAs,
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26 ³ These activities include “engaging in direct-mail marketing, door-to-door marketing, internet and
27 print campaigns, and other activities.” Compl. ¶ 42.
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1 including North Star Gas Company and Tiger Energy, attribute similar losses to the schemes.
2 More generally, between 2012 and 2014—prior to implementation of the schemes—the firm
3 pipeline capacity (or “load”) for all CTAs grew from approximately 12 percent to 19 percent.
4 Since implementation of the alleged schemes, however, UET avers the load is now down to 15.4
5 percent. Similarly, UET undersold PG&E by about seventeen percent prior to the schemes.
6 Today, UET’s prices are only about five percent less than PG&E’s as a result of the anti-
7 competitive conduct. Taken together, UET avers the schemes deny CTAs reasonable access to an
8 essential facility controlled by PG&E, drive up the CTAs’ expenses, and, by winnowing their
9 customer bases, reduce the CTAs’ effective economies of scale, preventing CTAs from pricing
10 natural gas as competitively as they once could.

11 UET further maintains the schemes have increased consumer prices, despite an ample
12 supply of natural gas and decreasing wholesale prices. Between 2014 and the present, for
13 instance, the monthly California price of natural gas delivered to residential consumers has
14 increased from \$10 to \$12 per thousand cubic feet. During that same period, the Citygate price for
15 natural gas in California has decreased from roughly \$6.00 to \$3.00 per thousand cubic feet. By
16 UET’s calculation, since the schemes were implemented, consumers are paying 20 percent more
17 for natural gas even though the Citygate price of the commodity is 50 percent less than it was in
18 2014.

19 UET avers several companies that retail natural gas in other states, such as Colorado-based
20 Aurora NG, will not attempt entry as a result of PG&E’s predatory practices. Other CTAs,
21 according to UET, have allowed the Reversal Scheme to dwindle their customer bases to the point
22 they have decided ultimately to withdraw from the market. One such CTA has seen its customer
23 base decline from 40,000 to just around 5,000, and has decided not to invest in acquiring
24 additional customers because of the schemes. All told, UET maintains PG&E’s schemes have
25 made entry and expansion in the market unprofitable due to the increased costs of marketing,
26 customer retention, and the significant carrying costs.

27 On August 31, 2015, PG&E moved to dismiss the complaint on various jurisdictional
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grounds and for failure adequately to plead claims for relief. The motion was granted as to the breach of contract claim, and granted with leave to amend as to the *respondeat superior*, Sherman Act, and conversion claims. Dkt. No. 74. UET filed the First Amended Complaint (“FAC”) on December 18, 2015, and PG&E moved to dismiss the FAC about six weeks later. The motion was granted with leave to amend as to the Sherman Act and conversion claims, and denied as to the *respondeat superior* claim. UET filed the Second Amended Complaint (“SAC”) on May 13, 2016, and PG&E moved to dismiss the SAC shortly thereafter.

III. LEGAL STANDARD

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While “detailed factual allegations are not required,” a complaint must have sufficient factual allegations to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible “when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* This standard asks for “more than a sheer possibility that a defendant acted unlawfully.” *Id.* The determination is a context-specific task requiring the court “to draw on its judicial experience and common sense.” *Id.* at 679.

Additionally, Rule 9(b) of the Federal Rules of Civil Procedure requires that “[i]n allegations of fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” To satisfy the rule, a plaintiff must allege the “who, what, where, when, and how” of the charged misconduct. *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997). In other words, “the circumstances constituting the alleged fraud must be specific enough to give defendants notice of the particular misconduct so that they can defend against the charge and not just deny that they have done anything wrong.” *Vess v. Ciba-Geigy Corp. U.S.A.*, 317 F.3d 1097, 1106 (9th Cir. 2003).

A motion to dismiss a complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure tests the legal sufficiency of the claims alleged in the complaint. *See Parks Sch. of*

Bus., Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995). Dismissal under Rule 12(b)(6) may be based on either the “lack of a cognizable legal theory” or on “the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). When evaluating such a motion, the court must accept all material allegations in the complaint as true, even if doubtful, and construe them in the light most favorable to the non-moving party. *Twombly*, 550 U.S. at 570. “[C]onclusory allegations of law and unwarranted inferences,” however, “are insufficient to defeat a motion to dismiss for failure to state a claim.” *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996); *see also Twombly*, 550 U.S. at 555 (“threadbare recitals of the elements of the claim for relief, supported by mere conclusory statements,” are not taken as true).

IV. DISCUSSION

The sole focus of this motion is UET’s “attempt to monopolize” claim. UET’s previous complaint failed adequately to plead PG&E’s market power, and the additional elements required to state satisfactorily a Sherman Act claim. The SAC connects the dots and contains several new allegations that significantly remedy the prior defects. PG&E’s motion to dismiss the Sherman Act claim will accordingly be denied.

A. Sherman Act

Section 2 of the Sherman Act outlaws anticompetitive conduct that monopolizes or threatens actual monopolization. 15 U.S.C. § 2. To make out a claim for an attempt to monopolize, UET must specify the market PG&E targeted and PG&E’s economic power within that market. UET also must demonstrate: “(1) specific intent to control prices or destroy competition; (2) predatory or anticompetitive conduct directed at accomplishing that purpose; (3) a dangerous probability of achieving monopoly power; and (4) causal antitrust injury.” *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1432–33 (9th Cir. 1995) (internal quotation marks omitted).

As a threshold matter, PG&E contends the claim is subject to Rule 9(b), but that is correct only in part. Sherman Act claims need not generally be pleaded with specificity, *see Cost Mgmt.*

Servs., Inc. v. Wash. Nat. Co., 99 F.3d 937, 950 (9th Cir. 1996), and Rule 9(b) “does not require that allegations supporting a claim be stated with particularity when those allegations describe non-fraudulent conduct.” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1104 (9th Cir. 2003). UET does aver PG&E’s fraudulent schemes constitute anti-competitive conduct, but those allegations have been found already to satisfy the Rule’s heightened pleading standard. As only allegations of “fraudulent conduct” must arise to meet Rule 9(b), the remainder of UET’s Sherman Act claim is subject to Rule 8. *See Vess*, 317 F.3d at 1104 (“[W]e now join [our sister circuits] in holding that in a case where fraud is not an essential element of a claim, only allegations (‘averments’) of fraudulent conduct must satisfy the heightened pleading requirements of Rule 9(b). Allegations of non-fraudulent conduct need satisfy only the ordinary notice pleading standards of Rule 8(a).”).

1. Relevant Market and PG&E’s Economic Power Within that Market.

The product market UET identifies is the commodity natural gas market specific to core customers who reside in northern California. The geographical boundaries of that market span from Eureka in the north to Bakersfield in the south, and from the Pacific Ocean along the coast to the Sierra Nevada mountains in the east. These allegations are adequate because CTAs compete with PG&E in this arena to provide a wholly interchangeable product.

To demonstrate market power, UET must show “the defendant owns a dominant share of th[e] market,” “there are significant barriers to entry,” and “existing competitors lack the capacity to increase their output in the short run.”⁴ *Rebel Oil Co. v. Atl. Richfield Co.*, 51 F.3d 1421, 1434 (9th Cir. 1995). “There is no requirement that these elements of the antitrust claim be pled with specificity.” *Newcal Indus., Inc. v. Ikon Office Sol.*, 513 F.3d 1038, 1045 (9th Cir. 2008).

UET avers PG&E’s share of the market is “70-90” percent. Compl. ¶ 2. UET also notes CTAs must fulfill exacting standards to operate in California, among them, completing an

⁴ In *Rebel Oil*, a market share of forty-four percent was sufficient to find market power, assuming “entry barriers are high and competitors are unable to expand their output in response to supracompetitive pricing.” 51 F.3d at 1438.

1 application, submitting executives' fingerprints, establishing creditworthiness, and posting a bond.
 2 UET further insists CTAs cannot remain competitive while establishing their own billing and
 3 collection services, and thus PG&E's provision of consolidating billing upon unreasonable terms
 4 amounts to a barrier to entry. In fact, several companies that retail natural gas in other states
 5 refuse to enter, according to UET, in light of PG&E's display of predatory conduct. Finally, given
 6 the schemes eliminate customers as quickly as CTAs can add them, UET contends CTAs as a
 7 practical matter have no ability to expand their output in response to PG&E's behavior. Drawing
 8 reasonable inferences in favor of UET, the SAC pleads adequately PG&E's market power.

9 *2. Anticompetitive Conduct.*

10 UET must allege PG&E has engaged in anti-competitive conduct. An act is
 11 anticompetitive "when it harms both allocative efficiency and raises the prices of goods above
 12 competitive levels." *Rebel Oil*, 51 F.3d at 1433 (emphasis omitted).

13 *a. Essential Facilities Doctrine.*

14 UET first argues PG&E has engaged in anti-competitive conduct by denying CTAs
 15 reasonable access to consolidated billing, an asserted "essential facility." "The 'essential
 16 facilities' doctrine imposes on the owner of a facility that cannot reasonably be duplicated and
 17 which is essential to competition in a given market a duty to make that facility available to its
 18 competitors on a nondiscriminatory basis." *MetroNet Servs. Corp. v. Qwest Corp.*, 383 F.3d 1124,
 19 1128 (9th Cir. 2004) (quotation marks omitted). Here, UET must allege (1) PG&E is a monopolist
 20 in control of an essential facility, (2) PG&E's competitors are unable reasonably or practically to
 21 duplicate the facility, (3) PG&E has refused to provide CTAs access to the facility, and (4) it is
 22 feasible for PG&E to provide such access. *See id.* at 1128–29.

23 UET avers PG&E's billing and collection services are essential to effective competition,
 24 and lie within the exclusive province of PG&E by definition. Though CTAs have the option of
 25 performing their own billing, UET insists CTAs cannot practically or reasonably duplicate
 26 PG&E's consolidated billing service while competitively servicing core customers in PG&E's
 27 area. UET further argues the service is afforded to CTAs on unfair and unreasonable terms
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1 because PG&E commits the alleged fraudulent schemes in connection with consolidated billing.
2 Finally, UET asserts consolidated billing could be provided to CTAs without committing fraud.

3 The problem with UET's theory is that it has not sufficiently grappled with the role of the
4 CPUC. According to the Supreme Court, "the indispensable requirement for invoking the doctrine
5 is the unavailability of access to the 'essential facilities'; where access exists, the doctrine serves
6 no purpose." *Verizon Commc'ns Inc. v Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398, 411
7 (2004). Thus, "essential facility claims should be denied where a state or federal agency has
8 effective power to compel sharing and to regulate its scope and terms." *Id.* (quotation marks and
9 alteration omitted). Recognizing as much, UET alleges that in light of the fraudulent schemes,
10 "the CPUC lacks the effective power to regulate the scope, terms, and manner in which
11 [consolidated billing] services are provided to CTAs." Compl. ¶ 124. This conclusory allegation
12 appears insufficient, but in light of the alternative allegations, the issue need not be reached.

13 *b. Alternative Allegations.*

14 The key allegation newly articulated in the SAC is that "[t]he Schemes are perpetuated
15 against *all* CTAs using PG&E's billing and collections services." Compl. ¶ 131 (emphasis added).
16 The fraudulent conduct detailed in the schemes is plainly anti-competitive because it diminishes
17 competition—harming allocative efficiency—and allegedly drives up prices. For instance,
18 reversals strip CTAs of their customers unlawfully and without any notice, and the Energy Credit
19 Scheme misappropriates CTAs' charges so PG&E can cover its own expenses. These actions
20 force CTAs to expend large sums on marketing to maintain their customer bases, and saddle them
21 with carrying costs that detract from their flexibility in running their businesses. Further, by
22 winnowing down the customer bases, the schemes reduce the CTAs' effective economies of scale,
23 preventing CTAs from pricing natural gas as competitively as they once could. This conduct
24 detracts from the CTAs' ability to pressure PG&E into applying for rate reductions, with the
25 upshot that PG&E can maintain consumer prices higher than it otherwise would. On that front,
26 UET calculates, since the schemes were implemented, consumers are paying 20 percent more for
27 natural gas even though the Citygate price of the commodity is 50 percent less than it was in 2014.

1 In light of these allegations, UET pleads adequately anti-competitive conduct on behalf of PG&E.

2 *3. Dangerous Probability of Achieving Monopoly Power.*

3 Monopoly power is “the power to control prices or exclude competition.” *United States v.*
4 *Grinnell Corp.*, 384 U.S. 563, 571 (1966) (quotation marks omitted). “[T]o determine whether
5 there is a dangerous probability of monopolization,” courts “consider the relevant market and the
6 defendant’s ability to lessen or destroy competition in that market.” *Spectrum Sports*, 506 U.S. at
7 456.

8 Here, the SAC pleads adequately there is a dangerous probability PG&E will obtain
9 monopoly power over the market for providing natural gas to core customers in PG&E’s service
10 area. To start, UET avers several companies that retail natural gas in other states, such as
11 Colorado-based Aurora NG, will not attempt entry as a result of PG&E’s predatory schemes.
12 Other CTAs, according to UET, have allowed the Reversal Scheme to dwindle their customer
13 bases to the point they have decided ultimately to withdraw from the market. One such CTA has
14 seen its customer base decline from 40,000 to just around 5,000, and has decided not to invest in
15 acquiring additional customers because of the schemes.

16 Taking things in the aggregate, between 2012 and 2014—prior to implementation of the
17 schemes—UET avers the load for all CTAs grew from approximately 12 percent to 19 percent.
18 Since implementation of the alleged schemes, however, the load has decreased to 15.4 percent.
19 Put differently, since the schemes took effect, PG&E’s share of the natural gas load has increased
20 from eighty-one (81) to eight-four (84) percent. The mechanism for this change is described in
21 UET’s averment that use of PG&E’s service is a practical necessity to compete, and PG&E
22 allegedly administers consolidated billing in a manner that subjects the CTAs to the schemes,
23 effectively driving them out of business. Lacking the downward pressure on natural gas prices
24 PG&E allegedly experienced prior to the schemes, its conduct artificially inflates the price
25 notwithstanding its regulation by the CPUC.

26 PG&E counters there are competing CTAs who do not utilize consolidated billing, but that
27 argument is unavailing because the complaint does not specify whether they compete for core
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customers in PG&E's service area. In any event, assuming they do, these competitors have not been able to counteract PG&E's supra-competitive pricing, according to the allegations detailed by UET above. At bottom, drawing reasonable inferences in favor of UET, the SAC evinces PG&E erected unlawful barriers to entry and reduced competition, creating a dangerous probability it will attain monopoly power and continue to charge supra-competitive prices.

4. *Specific Intent*

The Sherman Act "directs itself not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself." *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458 (1993). As such, UET must plead "specific intent to control prices or destroy competition." *Rebel Oil*, 51 F.3d at 1433. Such intent may be inferred from well-pleaded allegations of predatory or anti-competitive conduct. *See Spectrum Sports*, 506 U.S. at 459 (noting unfair or predatory tactics "may be sufficient to prove the necessary intent to monopolize"); *William Inglis & Sons Baking Co. v. ITT Cont'l Baking Co.*, 668 F.2d 1014, 1027 (9th Cir. 1981) ("[T]he existence of specific intent may be established not only by direct evidence of unlawful design, but by circumstantial evidence, principally of illegal conduct.").

Here, the SAC contains allegations sufficient to infer PG&E's anti-competitive intent. The alleged fraudulent schemes—which have been pleaded in great detail with respect to UET—seek to enrich PG&E unlawfully at the direct expense of its natural gas competitors. The complaint also notes "other CTAs, such as Tiger Energy, have reported that PG&E carries out the [same] Schemes against their Core Customers in the Relevant Geography and that, similar to UET and North Star, each CTA has reported loss of customer and market share." Compl. ¶ 131. Given the fraud alleged lacks any legitimate business justification, UET plausibly pleads the schemes are perpetrated against CTAs based not on competitive zeal, but anti-competitive malice.

PG&E argues the SAC does not show how its administration of consolidated billing evinces the intent to control retail prices for natural gas or to prevent CTAs from entering or expanding their market share. As noted above, however, UET avers use of PG&E's service is a practical necessity to compete, and PG&E allegedly administers the service in a manner that

1 subjects the CTAs to the schemes, unlawfully dwindling their customer bases. Once again,
 2 lacking the ability to undercut PG&E on its prices as they had been able to prior to the schemes,
 3 PG&E's conduct artificially inflates commodity gas prices notwithstanding its regulation by the
 4 CPUC. These allegations are sufficient to support a plausible inference of the requisite intent.

5 5. Antitrust Injury

6 To establish antitrust injury, a plaintiff must allege "(1) unlawful conduct, (2) causing an
 7 injury to the plaintiff, (3) that flows from that which makes the conduct unlawful, and (4) that is of
 8 the type the antitrust laws were intended to prevent."⁵ *Somers v. Apple, Inc.*, 729 F.3d 953, 963
 9 (9th Cir. 2013) (quoting *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of Cal.*, 190 F.3d 1051, 1055 (9th
 10 Cir. 1999)). "Where the defendant's conduct harms the plaintiff without adversely affecting
 11 competition generally, there is no antitrust injury." *Paladin Assocs., Inc. v. Mont. Power Co.*, 328
 12 F.3d 1145, 1158 (9th Cir. 2003).

13 UET plausibly pleads the requisite elements. It avers unlawful conduct on behalf of PG&E
 14 by virtue of the fraudulent schemes. This predatory conduct also harms CTAs in a number of
 15 different ways: the Payment Withholding Scheme imposes carrying costs; the Energy Credit
 16 Scheme misappropriates CTAs' charges; and the Reversal Scheme strips CTAs unlawfully of their
 17 customers. UET avers these schemes have been designed and implemented to destroy
 18 competition. Indeed, PG&E's share of the gas load has allegedly increased from eighty-one (81)
 19 to eight-four (84) percent since implementing the schemes, and some companies have had their
 20 customer bases dwindle to the point they have decided ultimately to withdraw from the market.
 21 Finally, consumers have allegedly been injured by PG&E's ability to charge supra-competitive
 22 prices.

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 24
 25 ⁵ With respect to the second element, a plaintiff must allege "some credible injury caused by the
 26 unlawful conduct. There can be no antitrust injury if the plaintiff stands to gain from the alleged
 27 unlawful conduct." *Somers*, 729 F.3d at 963. There is also "a fifth element—that the injured
 28 party be a participant in the same market as the alleged malefactors, meaning the party alleging the
 injury must be either a consumer of the alleged violator's goods or services or a competitor of the
 alleged violator in the restrained market." *Id.* (internal quotation marks omitted).

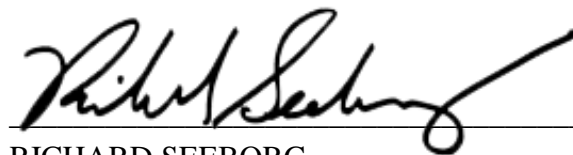
PG&E notes CTAs currently offer lower prices than its regulated rate, and CTAs in general benefit from higher prices for natural gas. Taking these issues in turn, the schemes prevent CTAs from undercutting PG&E as much as they once had, and thus CTAs lack the same ability to pressure PG&E into applying for rate reductions. The upshot is consumers are nonetheless harmed by artificially inflated prices today.⁶ Next, even if CTAs benefit from charging consumers higher prices, UET still avers competitors suffer injury through PG&E's anti-competitive act of unilaterally reverting customers back to its own service. At bottom, drawing reasonable inferences in favor of UET, the SAC pleads adequately antitrust injury.

V. CONCLUSION

PG&E's motion to dismiss UET's Sherman Act claim is denied. Defendants shall file an answer within twenty-one (21) days of the date of this order. The case management conference previously set for August 11, 2016, at 1:30 p.m. will now be held that same morning at 11:00 a.m. All parties shall appear telephonically and must contact Court Conference at (866) 582-6878 at least one week prior to the Conference to arrange their participation.

IT IS SO ORDERED.

Dated: August 4, 2016



RICHARD SEEBORG
United States District Judge

⁶ As detailed above, by UET's calculation, since the schemes were implemented, consumers are paying 20 percent more for natural gas even though the Citygate price of the commodity is 50 percent less than it was in 2014. Compl. ¶ 86. Additionally, PG&E's observation that CTAs have gained 3.4% market share since 2012 is misleading. The allegations charge CTA market share has decreased monotonically since implementation of the schemes.